

DUI Drug Cases

APAAC DUI: BAC and Beyond
January 12, 2015

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Impairment DUI Statute 28-1381(A)(1)

It is unlawful for a person to

- drive/operate a vehicle, within this state
- while under the influence of intoxicating liquor, any drug, a vapor releasing substance, or any combination thereof
- if impaired to the slightest degree.

“Ability to Drive”

- A jury instruction requiring proof that a defendant’s ability to drive was impaired is invalid.
- The State does not need to offer any evidence of bad driving, only that the defendant was impaired.
 - State v. Miller, 226 Ariz. 190

Per se DUI Drugs 28-1381(A)(3)

- Drive or be in actual physical control
- of a vehicle
- in this state
- while there is any drug defined in 13-3401 or its metabolite in the person's body.

Establish is in 13-3401

DUI Drugs 28-1381(A)(3)

- Impairment is **NOT** required!



DUI Drugs 28-1381(A)(3)

- No two hour window



DUI Alcohol vs. Drugs

- Why is DUI Alcohol different from DUI Drugs?



Impaired Driving: Alcohol

- Effects of alcohol are common knowledge
- Common behaviors associated with drinking too much
- Recognizable odor associated with alcoholic beverages



Alcohol is a Legal Drug

- Judges/Jurors have experience to draw on
- Alcohol effects have been studied, quantified



Impaired Driving: Drugs

- Thousands upon thousands of different drugs
- Unlike alcohol, where the effects are generally the same, effects of drug use are widely varied
- Illegal drugs are harder to study
- Effects are not common knowledge

DUI Drug Cases are on the Rise

- Increase in both illegal and prescription drug cases
 - Better detection, police training
 - Newer and more potent drugs
 - People are aware of dangers and enforcement of alcohol DUI's

Prescription Drug Defense 28-1381(D)

- Only potential defense to (A)(3) charge
- Not a defense to (A)(1)
 - ARS 28-1381(B)
- Must be valid on DOV
- Must be U.S. doctor

Prescriptions

- 28-1381(D)
 - Must take prescription **as prescribed**
 - Before amendment- using a drug prescribed by a doctor

Prescriptions

- 28-1381(D) is an **affirmative defense**.
 - Must be alleged 20 days before trial
 - Not an element
 - Defendant's burden to raise/disclose
 - Question of fact

Make Differences of Charges Clear to Jury

- | | |
|---|---|
| <ul style="list-style-type: none">■ (A)(1)<ul style="list-style-type: none">■ Prescription not a defense■ Impairment to the slightest degree | <ul style="list-style-type: none">■ (A)(3)<ul style="list-style-type: none">■ No Impairment■ Simple Yes or No issue<ul style="list-style-type: none">■ Is drug in system or not? |
|---|---|

What Do We do With a DUI Drug Case?

- Prove impairment - (A)(1) and/or...
- Prove illicit drug in system with no prescription - (A)(3)



What Not to Do

- Do not be too technical
- Don't rush - educate



DRE Exam

- **Three determinations of a DRE**
 - Is the person impaired? If the DRE concludes that the person is impaired...
 - Is the impairment due to an injury, illness or other medical complication, or is it drug-related? If the impairment is due to *drugs* ..
 - Which category or combination of categories of drugs is the most likely source of the impairment?

DRE Exam-Standardized and Systematic

- The DRE protocol is a standardized and systematic method of examining a Driving Under the Influence of Drugs. The process is *systematic* because it is based on a complete set of observable signs and symptoms that are known to be reliable indicators of drug impairment.
- The DRE evaluation is *standardized* because it is conducted the same way, by every drug recognition expert, for every suspect whenever possible.

Seven Drug Categories

- CNS Depressants (ETOH, Valium, Soma)
- CNS Stimulants (Meth, Cocaine, Desoxyn)
- Hallucinogens (MDMA, LSD, Peyote)
- Dissociative Anesthetics (PCP, Ketamine, DXM)
- Narcotic Analgesics (Heroin, Vicodin)
- Inhalants (Gases, Solvents)
- Cannabis (Marijuana, Hash)



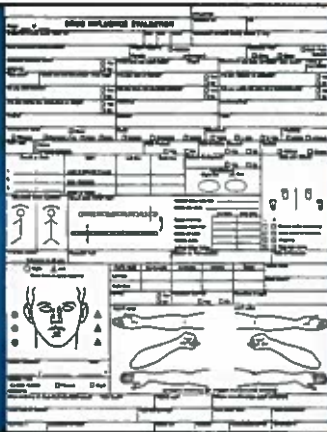
| Category | Subcategory | Common Name | Chemical Name | Effects | Signs | Tests |
|--------------------------|--------------|---------------|-----------------------------------|---|---|------------------------------------|
| CNS Depressants | Alcohol | ETOH | Ethanol | Relaxation, drowsiness, impaired judgment | Slurred speech, poor coordination, odor on breath | Field sobriety tests, breathalyzer |
| CNS Depressants | Barbiturates | Valium, Soma | Diazepam, Carisoprodol | Sedation, muscle relaxation | Drowsiness, slurred speech | Urine tests |
| CNS Stimulants | Amphetamines | Meth, Desoxyn | Methamphetamine, Propylhexedrine | Increased alertness, energy, heart rate | Hyperactivity, dilated pupils, rapid heart rate | Urine tests |
| CNS Stimulants | Cocaine | Cocaine | Cocaine | Increased alertness, energy, heart rate | Hyperactivity, dilated pupils, rapid heart rate | Urine tests |
| Hallucinogens | MDMA | MDMA | 3,4-Methylenedioxymethamphetamine | Altered perception, feelings of closeness | Increased heart rate, sweating, dilated pupils | Urine tests |
| Hallucinogens | LSD | LSD | Lysergic acid diethylamide | Altered perception, hallucinations | Dilated pupils, increased heart rate | Urine tests |
| Hallucinogens | Peyote | Peyote | Mescaline | Altered perception, hallucinations | Dilated pupils, increased heart rate | Urine tests |
| Dissociative Anesthetics | PCP | PCP | Phencyclidine | Altered perception, dissociation | Dilated pupils, increased heart rate | Urine tests |
| Dissociative Anesthetics | Ketamine | Ketamine | Ketamine | Altered perception, dissociation | Dilated pupils, increased heart rate | Urine tests |
| Dissociative Anesthetics | DXM | DXM | Dextromethorphan | Altered perception, dissociation | Dilated pupils, increased heart rate | Urine tests |
| Narcotic Analgesics | Heroin | Heroin | Diacetylmorphine | Pain relief, euphoria, drowsiness | Constricted pupils, drowsiness | Urine tests |
| Narcotic Analgesics | Vicodin | Vicodin | Hydrocodone | Pain relief, drowsiness | Drowsiness, slurred speech | Urine tests |
| Inhalants | Gases | Various | Various | Altered perception, dizziness | Dizziness, slurred speech | Urine tests |
| Inhalants | Solvents | Various | Various | Altered perception, dizziness | Dizziness, slurred speech | Urine tests |
| Cannabis | Marijuana | Marijuana | Cannabis | Relaxation, altered perception | Red eyes, increased heart rate | Urine tests |
| Cannabis | Hash | Hash | Cannabis | Relaxation, altered perception | Red eyes, increased heart rate | Urine tests |

DRE Protocol

Principle works for all drug cases

- 1) Making observations
- 2) Deducing impairment through the established principle that drugs cause identifiable and observable effects





12 Step Evaluation

1. Breath Alcohol Test
2. Interview of Arresting Officer
3. Preliminary Examinations
4. Eye Examinations
5. Divided Attention Tests
6. Vital Signs
7. Dark Room Evaluation
8. Check for Muscle Rigidity
9. Injection Sites
10. Interrogation & Statements
11. Opinion
12. Toxicological Examination

12 Step Evaluation cont.

- 1. Breath Alcohol Test-If any alcohol AND drugs are determined, defendant should be under the influence of both
- 2. Interview of Arresting Officer-Driving? Unusual behavior? Admissions? Paraphernalia or drugs? Etc.
- 3. Preliminary Examination-questions of defendant, 1st pulse, pupils size, tracking

12 Step Evaluation cont.

- 4. Eye Examination-HGN, VGN, Lack of Convergence
- 5. Divided Attention Tests-Walk and Turn, One Leg Stand, Rhomberg, Finger to Nose
- 6. Vital Signs-2nd Pulse, Blood Pressure, Body Temperature



12 Step Evaluation Con't

- 7. Dark Room Examination-Pupil size in light and dark, reaction to light, oral and nasal cavity observation
- 8. Muscle Tone Examination-Flaccid, rigid or normal
- 9. Injection Site Examination-evidence of injection, scarring, track marks

12 Step Evaluation cont.

- 10. Statements of Defendant-The DRE has an opinion as to the category of drug taken, may make that fact aware to the defendant, "What time did you smoke your last joint tonight?"
- 11. Opinion-Is the defendant impaired? What drug category (not specific drug).
- 12. Toxicologic Sample-Blood and/or urine

DRE Matrix

| DRE CATEGORY | CNS Depressants | CNS Stimulants | Hallucinogens | EDSs | Narcotic Analgesics | Alcohol | Cannabis |
|----------------------|-----------------|----------------|---------------|---------|---------------------|---------|----------|
| BDN | Present | None | None | Present | None | None | None |
| VBN | Present | None | None | Present | None | None | None |
| Lack of Coordination | Present | None | None | Present | None | Present | Present |
| Eyes | Normal | Delayed | Delayed | Normal | Constricted | Normal | Delayed |
| Reaction to Light | None | None | Normal | Normal | Late to None | None | Normal |
| Pulse | Down | Up | Up | Up | Down | Up | Up |
| Blood Pressure | Down | Up | Up | Up | Down | Up | Up |
| Temperature | Normal | Up | Up | Up | Down | Normal | Normal |

Toxicology

- What is Toxicology? The science of poisons—their source, chemical composition, action, tests and antidotes.
- Forensic Toxicology-The study and practice of the application of toxicology to the purposes of law.



Urine or Blood for Drug Test? (Or Both)

■ Urine

■ The good:

- Plenty of sample
- Drugs/Metabolite at Higher Concentration
- Easy, Cost-effective screening

■ The Bad:

- Cannot quantify drug in system
- Metabolite may be inert

Urine or Blood for Drug Test?

■ Blood

■ The good:

- May be able to quantify
- Can tell if drug is active in the system
- Easy, Cost-effective screening

■ The Bad:

- May take longer to analyze
- Typically less sample, may be problem testing for multiple drug use

Analysis-Screening

■ Screening Tests

- Screening tests are designed to look for a class of drugs or a specific drug
- Radioimmunoassay (RIA), Enzyme Immunoassay (EIA), Gas Chromatography (GC)

Screening, cont.

- Positive screens give the analyst an idea of what may be in the sample. Negative screen rules out.
- They are not infallible. Used as a tool to find out what may be present.

Cutoff Levels

"I know this guy was on drugs and the lab didn't find any..., why not?"

- The most likely answer for this question involves the breadth of screens and the cutoff levels used by the laboratory.
- Usually they are in nanograms/milliliter (ng/mL) concentration.

Cutoff Levels

- Every lab establishes their own cutoff levels, they can vary from lab to lab.
- Blood cutoff levels should be lower than urine.
- Cutoff levels are used to determine which samples will be sent for confirmation.

Cutoff Levels cont.

- Samples that may have some drug, but not enough to be above the cutoff level, will not move to confirmation.
- This is how some cases where the officer sees symptomology, but the lab reports "no drugs", end up =: below the cutoff level.

Confirmation Tests

- Presumptive positive screening tests are followed up with a confirmation test.
- Confirmation tests use a different scientific principle, are more specific and more sensitive than the screening test.
- Most commonly used confirmation procedure is Gas Chromatography/Mass Spectrometry (GC/MS)

Confirmation Tests, cont.

- The purpose of the confirmation test is to identify and possibly quantitate a drug.



Metabolism

- What is Metabolism? It is the biochemical transformation of a drug.
- Active and inactive metabolites
- Active metabolites show pharmacodynamic properties (diazepam → nordiazepam)
- Inactive metabolites do not have an effect on the body (THC → carboxy-THC)

Terms used in Toxicology

Psychoactive: adj. Affecting the mind or mental processes

Psychomotor: adj. Of or pertaining to muscular activity associated with mental processes

Either can be used to show impairment!

Operation of a Motor Vehicle

- Driving involves multiple tasks, the demands of which can change continually. To drive safely, one must maintain alertness, make decisions based on ever-changing information present in the environment, and execute maneuvers based on these decisions.

Can we correlate driving and observations to the drug found?



Lab Report

- Who analyzed – which part (who will you call?)
- Understand what it means!
 - PDR - warnings, side effects, recommended dosages
- Ensure both screening and confirmatory test has been completed and disclosed
- Chain of custody

Lab Report

- Therapeutic doses
- Metabolites and impairment
- Contact the toxicologist **BEFORE** trial
- Do they need to check for additional drugs?

Why Take Prescriptions?

Even if "as prescribed"

To alleviate pain
To change attitude
To effect mood

Person is under its influence
Emphasize impairment

Getting Ready for Trial

- Read the police report, the DRE report, witness statements, lab reports, check for supplements
- Contact Officers, witnesses, toxicologists
- Anticipate defenses, communicate them to your witnesses
- Consider preparing *voir dire* questions

Consider *Voir Dire* Questions & Jury Instructions

- Prescription Drugs
- Illegal Drugs
- Metabolites
- Impairment on (A)(3)
- Medical Marijuana
- Spice (no tox)
- Others??

Prepare *Voir Dire* Questions for the Judge

What if the Judge Denies
Requested *Voir Dire*?

Ask for a mini opening

Direct Examination of officer

- The officer's testimony is the link between the signs and symptoms of impairment and toxicological evidence
- Officer proves impairment

Direct Examination of a DRE/Officer

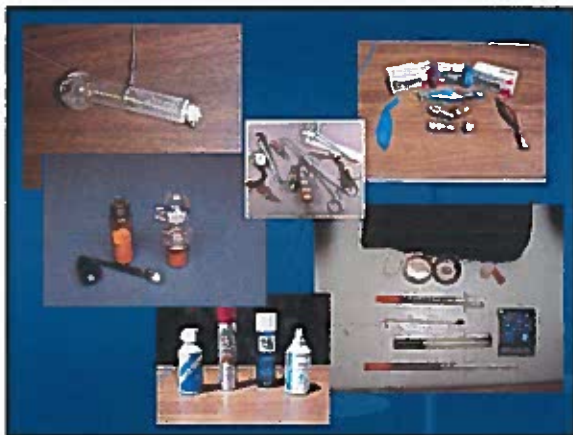
- Do not try to elicit opinion too soon
- Tie the drugs found to the impairment observed at all stages of the case



Make Use of Visual Aids

- Diagrams
- Charts
- Photos
- Videotapes
- Exhibits

People retain info they see better than if they just hear it





What Do The Numbers Mean?

- For vast majority of drugs, no direct correlation of blood drug concentrations with degree of impairment currently exists.
- There is no "legal limit" so must look at signs of impairment – bring this out

Direct Examination of a Toxicologist

- Establish chain of custody
- Use expert to strengthen other parts of case (stop, roadside FSTs, etc.)
- Tie the drugs found to the impairment observed at all stages of the case
- Anticipate defenses/defense expert

Tricky/Unusual Cases



Partial or Unusual Evaluations

- Partial Evaluations
 - Traffic collisions
 - Physical limitations
 - Combative suspect
 - Uncooperative suspect
- No Impairment Demonstrated

Negative Tox Results

- Work with your DRE/Officer
- Develop/understand explanations
- Examine your time-line
 - Is impairment early in the time-line
 - Type of drugs
- Issue with blood or urine??
- Consult with toxicologist
- Test for other drugs?
- Emphasize impairment
- Can lab test for it (Spice)?



DRE Called Wrong Drug

- Figure out why
 - Polydrug use
 - Up side/down side of drug
- Partially wrong or totally wrong
- Work with DRE (DRE instructor)
- Call toxicologist – have him/her explain
- Emphasize impairment
- (A)(3)

Prescriptions

- Get a copy
 - Prescribed dosage vs. amount taken
 - Investigate validity
- Evidence defendant is abusing the drug ("as prescribed")
- Consult with toxicologists

Prescriptions

- PDR (your best friend)
 - Warnings
 - Side-effects
- Emphasize impairment and tox results
 - Tie together
- Additive effects (if more than one or ETOH combo)

Refusals/Suppressions

- Argue consciousness of guilt (refusal)
- Focus on the DRE examination
- Bring out all impairment
- Admissions
- Physical evidence
- Stress consistencies between officers
- Call an expert??
- Drugs or paraphernalia found

Questions?
